

Nos. 22-1819(L) & 22-1822

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CITY OF HUNTINGTON, WEST VIRGINIA and
CABELL COUNTY COMMISSION,

Plaintiffs-Appellants,

v.

AMERISOURCEBERGEN DRUG CORPORATION, *et al.*,

Defendants-Appellees.

On Appeals from the United States District Court
for the Southern District of West Virginia
Case Nos. 3:17-cv-01362 and 3:17-cv-01665, Hon. David A. Faber

**CONSENT MOTION TO EXTEND TIME TO FILE REPLY BRIEF AND
TO EXCEED WORD LIMIT**

Pursuant to Federal Rules of Appellate Procedure 26(b) and 27 and Fourth Circuit Local Rules 27 and 32(b), Appellants City of Huntington, West Virginia (“Huntington”), and Cabell County Commission (“Cabell County”) respectfully move for (1) a 14-day extension of time to file their reply brief, from April 17 to May 1, 2023; and (2) leave to exceed the 6,500-word limit set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(ii). Appellants request leave to file a brief no longer than 9,000 words, which is half of the 18,000 words the Court granted for the parties’ principal briefs. Appellees AmerisourceBergen Drug Corp., Cardinal

Health, Inc., and McKesson Corp. have indicated that they consent to this Motion.

In support of the Motion, Appellants state as follows:

1. This appeal arises from a bellwether trial in the multidistrict litigation, *In re National Prescription Opiate Litigation*, MDL No. 2804. The 40-day bench trial in this case spawned an extensive record and numerous complex issues of law and fact. *See* Doc. 38.

2. Reflecting the complexity of this appeal, this Court granted extensions of time and increased word limits for Appellants' and Appellees' principal briefs.

3. After Appellants submitted their opening brief on December 27, 2022, Appellees moved for a 60-day extension of time to respond. *See* Doc. No. 45. The Court granted the motion, setting March 24, 2023 as the deadline for Appellees' response brief. *See* Doc. No. 46. The Court's order established Appellants' deadline to reply, April 17, 2023, reflecting the 21-day default rule. *Id.*; *see* Fed. R. App. P. 31(a)(1).

4. In light of the extension Appellees obtained to respond to Appellants' opening brief, as well as the complex and voluminous trial record, Appellants request a 14-day extension of time to submit a reply brief. A short extension is consistent with this Court's prior briefing orders and necessary to permit Appellants' counsel to effectively review and respond to arguments presented in Appellees' response brief when it is filed on March 24, 2023.

5. This Court also granted leave for both parties' principal briefs to exceed the word limit set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(i). The Court allowed principal briefs no longer than 18,000 words. *See* Doc. No. 40. Accordingly, Appellants request leave to file a reply brief no longer than 9,000 words, consistent with the default rule that replies are half of the length of the parties' principal briefs. *See* Fed. R. App. P. 32(a)(7)(B)(ii) ("A reply brief is acceptable if it contains no more than half" the words allowed for principal briefs).

6. Appellants' Motion is timely under this Court's rules because Appellants' reply brief is currently due April 17, 2023. *See* 4th Cir. L.R. 32(b) (motions to exceed word limits must be filed at least 10 days before brief's due date).

* * *

For the foregoing reasons, Appellants respectfully request that this Court grant (1) a 14-day extension of time to file their reply brief; and (2) leave to exceed the limit set by Federal Rule of Appellate Procedure 32(a)(7)(B)(ii), so that Appellants may file a brief no longer than 9,000 words.

DATED: February 28, 2023

Respectfully submitted,

/s/ David C. Frederick

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it uses Times New Roman 14-point font. I also certify that this Motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 515 words, excluding the parts of the Motion exempted by Federal Rules of Appellate Procedure 27(d)(2) and 32(f).

DATED: February 28, 2023

Respectfully submitted,

/s/ David C. Frederick

David C. Frederick

CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2023, I served a copy of this Motion on all counsel of record via CM/ECF.

DATED: February 28, 2023

Respectfully submitted,

/s/ David C. Frederick

David C. Frederick